IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	*	
	*	**Case No.: 5:15-cr-00432-GEKP-1**
vs.	*	
	*	
DOUGLAS S. RAE,	*	
	*	
Defendant	*	

DEFENDANT'S SENTENCING MEMORANDUM

AND NOW, comes the Defendant, Douglas S. Rae, by and through his attorneys, John J. Griffin, Esquire, and John J. Waldron, Esquire, and respectfully submits the following Sentencing Memorandum to this Honorable Court for his Sentencing Hearing and would move that he receive a minimally sufficient sentence to achieve the goals of punishment pursuant to Section 3553(a) factors, and in support of this Sentencing Memorandum, the Defendant avers the following:

I. INTRODUCTION

On September 17, 2015, a grand jury in the Eastern District of Pennsylvania returned a 35-count Indictment charging Douglas Rae with mail fraud, in violation of 18 U.S.C. 1341 [Counts 1-7]; wire fraud, in violation of 18 U.S.C. § 1343 [Counts 8-32]; and money laundering, in violation of 18 U.S.C. § 1957 [Counts 33-35]. On September 12, 2016, Douglas Rae appeared before the Honorable Gene E.K. Pratter, and pled guilty to Counts 1, 3, 6, 12, 15, 26, 33 of the Indictment pursuant to a written guilty plea agreement. According to the presentence report, Douglas Rae has complied with all Court-ordered conditions of release.

II. FEDERAL SENTENCING GUIDELINES POST-BOOKER SENTENCING IN THE THIRD CIRCUIT

As revised by *United States v. Booker*, 543 U.S. 220, 245-6 (2005), the Sentencing Reform Act "requires a sentencing court to consider [advisory] guidelines ranges, see 18 U.S.C. § 3553(a)(4), but it permits the court to tailor the sentence in light of other statutory concerns as, well, see § 3553(a)." This means that a district court's primary obligation is to choose a sentence in light of all the statutory sentencing factors including the advisory guideline range in the context of a defendant's particular case, and that sentence may or may not be imposed with regard to the guideline range. *See United States v. Coleman*, 451 F.3d 154, 158 (3d Cir.2006) ("the guidelines recommended range may be modified or disregarded by a district court upon consideration of the other sentencing factors Congress has identified in § 3553(a)"). *Post-Booker* guidelines are advisory.

In the Third Circuit, district courts "follow a three-step sentencing process." *United States v. Gunter*, 462 F.3d 237, 247 (3d Cir. 2006):

(1) Courts must continue to calculate a defendant's Guidelines sentence precisely as they would have before *Booker* . . .

(2) In doing so, they must formally rule on the motions of both parties and state on the record whether they are granting a departure and how that departure affects the Guidelines calculation, and take into account our Circuit's pre-*Booker* case law, which continues to have advisory force . . .

(3) Finally, they are required to exercise their discretion by considering the relevant § 3553(a) factors . . . in setting the sentence to impose regardless whether it varies from the sentence calculated under the guidelines.

Id. Thus, in the critical third *Gunter* step, the district courts must apply their own independent judgment to the sentence to be imposed in light of the sentencing factors, whether or not that judgment results in a sentence within the advisory range. *See also United States v. Cooper*, 437 F.3d 324, 329-30 (3d Cir. 2006) (district court must give "meaningful consideration to the section 3553(a) factors" and impose a sentence for reasons that are logical and consistent with those factors, but rejecting a presumption that the sentence should be imposed within guideline range).

Moreover, as the Court explained in *Gunter*, section 3553(a) "begins with the broad mandate that sentencing courts shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes of sentencing set out in the statute." 462 F.3d at 243. This broad mandate applies to the consideration of all of the section 3553(a) factors, and it necessarily takes precedence of the advisory guideline range and other individual factors.

A district court commits error if, in applying the third *Gunter* step, it believes that it is bound by any aspect of the sentencing guidelines. This aspect of post-*Booker* Third Circuit law was illustrated clearly in *Gunter*, 462 F.3d 237. There, the defendant's guideline range was based on his offense for possession with intent to distribute cocaine base ("crack" cocaine). At the time, the guidelines for crack cocaine were subject to the 100-to-1 crack versus powder cocaine differential, meaning that the defendant's advisory guideline range was significantly higher than it would have been had his offense involved powder cocaine. *Id.* at 238. At Sentencing, the defense asked the district court to consider the unwarranted nature of that differential in imposing sentence. The district court refused to do so, concluding that it was not at liberty to reconsider Congressional intent in establishing and maintaining the differential. *Id.* at 239. The Third Circuit remanded, because the district court's refusal to consider the differential merely as advisory in the third step of the sentencing process amounted to treating the guidelines as mandatory. *Id.* at 247-48; See also

Cooper, 437 F.3d at 330-31 (rejecting notion that guideline sentence if presumptively correct as "coming close to restoring the mandatory nature of the guidelines").

Accordingly, district courts now have much greater discretion in sentencing than was previously afforded, and the Third Circuit has spoken firmly in support of this discretion. The courts should exercise their sentencing discretion to further the directives and purposes of 18 U.S.C. § 3553, which are set forth and applied to Douglas Rae's case in the next sections.

III. THE DIRECTIVE AND FACTORS OF SECTION 3553(a)

The primary directive in section 3553(a), as noted above, is for sentencing courts to "impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph 2," which are:

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
(B) to afford adequate deterrence to criminal conduct;
(C) to protect the public from further crimes of the defendant; and
(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. § 3553(a)(2).

In determining the minimally sufficient sentence, section 3553(a) further directs sentencing courts to consider the following factors:

1) the nature and circumstances of the offense and the history and characteristics of the defendant, § 3553(a)(1);
2) the kinds of sentences available, the advisory guideline range and pertinent guideline policy statements, §3553(a)(3)-(5);
3) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct, § 3553(a)(6); and
4) the need to provide restitution to any victims of the offense, §3553(a)(7).

This is not an exhaustive list of the factors the Court can consider, as "no limitation shall be placed on the information concerning the background, character, and conduct of [Douglas Rae] which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence." 18 U.S.C. §3661.

IV. APPLICATION OF THE STATUTORY FACTORS TO THIS CASE

A. The History and Characteristics of the Offender and the Nature and Circumstances of the Offense.

History of the Offender

Douglas Rae was born on November 23, 1956, in Greensburg, Pennsylvania. He is sixty (60) years old. He is one of four children born to the marital union of Robert Rae (deceased) and Wanda Stair (deceased). His mother passed away in 1978 as a result of injuries sustained during a car accident. His father passed away in the 1980s as a result of liver and kidney failure from diabetes.

Rae described a "normal" childhood absent any traumatic events. He was born and raised in Greensburg but moved to Easton, Pennsylvania around the age of 10 and has lived in the area ever since. He recalled a middle-class upbringing indicating his parents "did the best they could" to provide for him and his siblings.

Rae graduated from Easton Area School District in 1973. He attended Kutztown University in 1975 and Northampton County Community College in 1976. Mr. Rae married Cathy Beuhler on September 15, 1979. The union produced two children: Jessica Schwartz (age 35) and Jamie Stutzer (age 33). He has four grandchildren.

Rae reported a history of substance abuse involving marijuana and cocaine. He began using marijuana in 1973 and cocaine in 1979. He reported his controlled substance issues stopped in 1991. He indicated that drugs were readily available while working as a lighting production manager for various companies that toured the United States with various artists such as Stevie Nicks, Loverboy, Debbie Gibson, Bryan Adams, Robert Hazard, and the Hooters. During these tours substance abuse was prevalent. He reported that he has never received substance abuse treatment. Mr. Rae also consumes alcohol but does so on a social and responsible basis.

Rae began working for QVC Incorporated in West Chester, Pennsylvania around July 1997 until May 2013. He was employed as a lighting engineer, then a lighting supervisor, before being promoted to lighting manager. He was terminated as a result of his conduct in this offense.

Rae is currently self-employed with Lighting Products International (LPI). The company operates out of his home at 3689 Fire Lane in Bethlehem, Pennsylvania. He started the lighting sales business in 2009. He is also partnered in a business venture R&V Investors. This business invests in real estate and remodels homes. The instant offense has severely strained his relationships with his family. He has been separated from his wife and estranged from members of his family.

Nature and Circumstances of the Offense

Douglas S. Rae served as a lighting department manager at QVC in West Chester, Pennsylvania. Rae was responsible for purchasing and overseeing the purchasing of lighting related products and services. Rae owned two outside business entities – Lighting Products International (LPI) and Lighting Equipment Sales and Service (LESS). Rae abused his position within QVC to conduct several schemes involving false invoices to QVC for goods that were never delivered and for services that were never performed. Over the course of six (6) years, between November 2006 and May 2013, Rae's total theft amounted to over $1.8 million dollars.

B. The Need for the Sentence Imposed to Promote Certain Statutory Objectives:

(1) To reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense.

Douglas S. Rae has suffered the shame and humiliation of being indicted in this matter and having pled guilty to felony offenses. This Court will no doubt sentence Douglas S. Rae in a fashion that reflects the seriousness of the offense, but at the same time, provides for just punishment. The negative stigma of being convicted of felony theft offenses will follow Mr. Rae for the rest of his adult life. This stigma will magnify the punishment imposed by the Court as employers will consider his conviction when considering him as a potential employee or business partner.

(2) To afford adequate deterrence to criminal conduct, to protect the public from further crimes, and to provide the defendant with needed medical or other correctional treatment in the most effective manner.

Douglas S. Rae faces a period of incarceration pursuant to the advisory guidelines. Mr. Rae certainly recognizes the seriousness of his actions. Mr. Rae appears to be in good health for his age considering a twenty-year addiction to cocaine and other illicit substances and never having attended treatment. It is unfortunate that he was able to overcome such drug use to succeed in business but ultimately lose it all by committing the instant offense.

C. The Kinds of Sentences Available.

Pursuant to United States Sentencing Guidelines based on a Total Offense Level of Twenty-Eight (28) and a Criminal History Category of One (I), the Guideline Range for imprisonment is Seventy-Eight to Ninety-Seven (78-97) months. As the Court is aware, there are pending, unresolved objections to the presentence investigation report involving four (4) potential levels. The Court's decision on these objections will ultimately set the final guideline range.

Wire and mail fraud - Counts 1, 3, 6, 12, 15, and 26 carry a maximum term of imprisonment of 20 years per count. Money laundering - Count 33 has a maximum term of imprisonment of 10 years. A special assessment of $100 is mandatory per count for a total of $700. 18 U.S.C. §3013.The Court may impose a term of supervised release of not more than 3 years per count. The guideline range for a term of supervised release is 1 year to 3 years per count. USSG §5D1.2(a)(2). Multiple terms of supervised release shall run concurrently. The Defendant is eligible for not less than 1 nor more than 5 years of probation. 18 U.S.C. § 3561(c)(1).

Defense counsel contends that the sentencing guideline range of 78 to 97 months should be given less deference. Although the district court must give respectful consideration to the guidelines in determining a sufficient sentence, *Gall v. United States*, 128 S. Ct. at 594, it may not presume that the guideline sentence is the correct one, *Rita v. United States*, 127 S. Ct. 2456, 2465 (2007).

Mr. Rae accepts responsibility and the necessity of punishment for his crimes. However, an extended period of incarceration as the guidelines would recommend is a sentence which is greater than necessary based on the totality of circumstances. Rae is an individual who would gain greater benefit from proper supervision in the community where he could work to pay back his former employer rather than an extended period of incarceration.

D. The Need to Avoid Unwarranted Sentence Disparities.

Rae schemed with John Hodde who was the General Manager of the Virginia Office of Barbizon Capitol (Barbizon). Hodde covered Rae's credit charges and in return Hodde received a built-in profit margin for Barbizon. Barbizon's fraudulent invoices totaled $686,273.32. Rae also schemed with Michael Keppler in defrauding QVC for $174,219.04 and in return Keppler received approximately 10% of the proceeds. (See PSR ¶17-22).

Doug Rae certainly played a larger role than either co-conspirator and this court will no doubt sentence him in a fashion appropriate to his role. On January 17, 2017, John R. Hodde was sentenced to 30 months of probation with a fine of $30,000.00 and restitution in the amount of $686,273.32. On January 18, 2017, Michael H. Keppler was sentenced to 15 months of probation with a fine of $20,000.00 and restitution in the amount of $174,219.04.

E. The Need to Provide Restitution.

Although the victim has not responded to the presentence investigation, Restitution shall be ordered. USSG §5E1.1. The presentence report lists $1,804,058.85 in restitution to QVC, Incorporated. If the Court is imposing restitution it must consider the financial resources of the defendant, the financial needs and earning ability of the defendant, and the defendant's dependents, and other such factors as the court deems appropriate. See 18 U.S.C.§ 3663(a)(1)(B)(i)(II).

V. STATEMENT OF REASONS PURSUANT TO 18 U.S.C. § 3553(c)

This Honorable Court has substantial sentencing discretion after *Booker*, and it is free to consider a number of factors, including background, character, or conduct of the Defendant to fashion a sentence that satisfies not only the statutory purpose but is deemed to be fair and just. Defendant may raise issues that may allow for a downward variance in this case.

Counsel recognizes that simply because Mr. Rae entered a guilty plea and saved the government from trial does not automatically suggest a potential variance. However, there are certain issues that counsel would, most respectfully, request this Honorable Court consider as a potential variance tending to suggest a sentence considerably below the guideline level as most appropriate.

As previously discussed, Mr. Rae had a wonderful upbringing, which many, would be proud to call their own. His work as a lighting production manager permitted him to live a unique lifestyle introducing him to various artists such as Stevie Nicks, Loverboy, Debbie Gibson, Bryan Adams, Robert Hazard, and the Hooters. As such, one may certainly question the potential issue for a variance.

Mr. Rae took advantage of a highly successful corporation and it spiraled out of control for many years. The amount of restitution is significant and one of the factors to consider is the ability to make the victim whole. Even with this fraud looming over him, Mr. Rae has shown himself to be capable of substantial, yet legal, earning capability. As the PSR notes, he is successful in real estate and other investment property dealings. (See PSR ¶81). This Honorable Court can consider a sentence substantially below the guidelines of this case to provide a meaningful opportunity for Mr. Rae to continue in his legal business ventures and begin making the victim of his fraud whole again.

VI. CONCLUSION

For the foregoing reasons, the Defendant Douglas S. Rae respectfully submits that a sentence which is substantially below the sentencing range recommended by the guidelines is an appropriate sentence. Such sentence would adequately consider the enumerated factors and fashion a sentence that is not greater than necessary to comply with the purpose of sentencing.

RESPECTFULLY SUBMITTED:

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Defendant's Sentencing Memorandum filed through the ECF System will be electronically sent to the registered participants as identified on the Notice of Electronic Filing, including the following:

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